IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.Rev.Pet.No. 3063 of 2007()

AGAINST THE ORDER DATED 29/06/2007 IN CRMP,.2214/07 IN CC.1203/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

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REVN. PETITIONER: PETITIONER/COMPLAINANT:

AUGUSTINE, S/O. VARGHESE,
AGED 58, NALAMPURACKAL VEEDU, THURAVOOR SOUTH VILLAGE, PADINJATTUMKARA, THEKKUM MURI, CHERTHALA TALUK, ALAPPUZHA DISTRICT.

BY ADV. DR.V.N.SANKARJEE
SRI.V.N.MADHUSUDANAN
SMT.R.UDAYA JYOTHI

RESPONDENTS: COUNTER PETITIONER/ACCUSED:

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1. B. HARIHARA SUDHAN, S/O. BHASKARAN, MULLAPPALLY VEEDU, AROOKKUTTY VILLAGE, THIRUTHI BHAGAM MURI, CHERTHALA TALUK, ALAPPUZHA DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.M.FIROZ
SRI.BABU CHERUKARA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3063 OF 2007

Dated this the 18th day of October, 2007

O R D E R

The revision petitioner who is the complainant in C.C.No.1203/05 on the file of JFCM-II, Cherthala, challenges the order dated 29.6.07 passed by the said Magistrate dismissing Crl.M.P.No.2214/07 filed by the petitioner seeking alteration of the charge under section 216 Cr.P.C. from Section 138 of the Negotiable Instruments Act, 1881 to Section 420 IPC.

2. I heard the learned counsel for the revision petitioner as well as the learned counsel for the respondent/accused.

3. The learned counsel for the revision petitioner submitted that Annexure-I private complaint was filed not only under sections 138 and 142 of the Negotiable Instruments Act but also under section 420 IPC but the Magistrate took cognizance only of the offence punishable under section 138 of the N.I. Act and during the progression of the trial when the account particulars were produced by the drawee bank it became known that the accused was not the account holder but the account holder was somebody else. This according to the revision

petitioner was the reason for filing Crl.M.P.2214/07 seeking alteration of charge.

4. It is true that the private complaint as originally filed does propose to prosecute the accused for offences punishable under section 138 of the N.I. Act and also section 420 IPC. But then, the ground on which section 420 IPC is based is not on account of the fact that the account holder is not the accused but somebody else. On the contrary, the allegation in the complaint so as to bring it under section 420 IPC is that when the cheque was presented it was dishonoured for the reason that the account was closed. Annexure-I private complaint does not contain allegations to the effect that the account particulars obtained from the drawee bank revealed that the account holder was not the accused but somebody else. On the contrary, it is admitted that this information came to the knowledge of the revision petitioner only during the course of C.C.No.1203/05 and which was not known to him when he instituted the said private complaint. If so, the court below cannot be faulted for dismissing the petition for alteration of charge. The order passed by the court below is upheld. But it is made clear that the dismissal of the said petition

will not preclude the revision petitioner from filing a fresh complaint with necessary materials for prosecuting the respondent/accused for an offence punishable under section 420 IPC if he is so advised.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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